

## REMARKS

### The Office Action

Claims 1-5, 30-39, and 49-51 are pending in this application. Claims 6-29 and 40-48 are withdrawn from consideration. With this reply claims 30-39 have been canceled. Thus, with this reply claims 1-5 and 49-51 are pending in this application.

Claims 1-5, 30-39, and 49-51 stand provisionally rejected for non-statutory obviousness-type double patenting. Claims 30-39 stand rejected under 35 U.S.C. § 112, first paragraph. Claims 1-5, 30-39, and 49-51 stand rejected under 35 U.S.C. § 103(a) for obviousness.

### Objections to the specification

The title and abstract are objected to for failure to describe the subject matter under examination. Applicants have addressed these objections by amendment of the title and abstract. In view of these amendments Applicants request that these objections be withdrawn.

### Obviousness-type double patenting

Claims 1-5, 30-39, and 49-51 stand provisionally rejected for non-statutory obviousness-type double patenting over claims 22-31 of copending Application No. 10/948608; over claims 21-23 of copending Application No. 11/020870; over claims 21-

24 of copending Application No. 11/008597; over claims 22-31 of copending Application No. 10/948608; over claims 17, 36-45, and 58 of copending Application No. 10/453155; over claims 47-61 of copending Application No. 10/318998; over claim 23 of copending Application No. 10/443351; and over claims 1-16 of copending Application No. 10/735344. Once the pending claims are found to be otherwise allowable except for this ground of rejection, Applicants will address the rejection, including consideration of whether to file terminal disclaimers.

Rejection under 35 U.S.C. § 112, first paragraph

Claims 30-39 stand rejected under 35 U.S.C. § 112, first paragraph, for lack of written description. Applicants have addressed this rejection by canceling claims 30-39. Applicants reserve the right to pursue the subject matter of claims 30-39 in a subsequent application.

Rejection under 35 U.S.C. § 103(a)

Claims 1-5, 30-39, and 49-51 stand rejected under 35 U.S.C. § 103(a) for obviousness over U.S. Patent Publication No. 2003/0236265. Applicants assert that under 35 U.S.C. § 103(c) U.S. Patent Publication No. 2003/0236265 is not prior art against the pending claims.

The inventor of U.S. Patent Publication No. 2003/0236265, Chalom B. Sayada,

and the inventors of the present application, Bernard E. Cabana, Arthur F. Michaelis, Gary P. Magnant, and Chalom B. Sayada, had a common obligation to assign their rights to ActivBiotics Incorporated at the time both of these inventions were made. For the present application, assignments from the inventors to ActivBiotics have been recorded with the U.S. Patent and Trademark Office at Reel 015224, Frame 0832 and at Reel 015330, Frame 0199. For U.S. Patent Publication No. 2003/0236265, an assignment from the inventor to ActivBiotics has been recorded with the U.S. Patent and Trademark Office at Reel 014439, Frame 0623.

In view of the inventor's common obligation to assign their rights to ActivBiotics at the time of these inventions, Applicants request that the obviousness rejection be withdrawn.

CONCLUSION

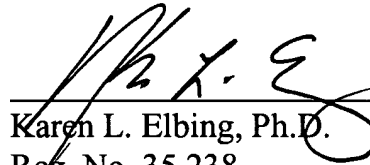
Enclosed is a Petition to extend the period for replying to the Office action for three months, to and including September 29, 2006, and a check in payment of the required extension fee.

If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Applicants submit that the claims are in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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Karen L. Elbing, Ph.D.  
Reg. No. 35,238

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045